

California Energy Commission  
Energy Facilities Siting &  
Environmental Protection Division  
REPORT OF CONVERSATION

File:

**Project Title:** Oakley Generating Station

**() TELEPHONE(X) MEETING LOCATION:** email conversation

**NAME:** Ann Crisp

**TIME:**

**DATE:** 10/6/2010

**WITH:** Krystal Hinojosa (East Contra Costa County  
Habitat Conservancy)

**PHONE**

**SUBJECT:** Questions and responses regarding ECCC HCP/NCCP

**COMMENTS:**

On October 6, 2010, I received email responses to question provided to Krystal Hinojosa on 9/28/2010. The entire e-mail exchange is attached.

**DOCKET**  
**09-AFC-4**

DATE	OCT 06 2010
RECD.	DEC 14 2010

**COPIES TO:**

**NAME:** Ann Crisp

**SIGNATURE**

***1- On the cover letter it states that BMPs and other implementation measures will be discussed on Sept 22 - will these be in the final application? As I am writing a PSA and a Final Staff Assessment (FSA) I can state in the PSA that additional BMPs are currently being developed with the applicant and the Conservancy and include these additional measures either in the FSA or the BRMIMP.***

The applicant has agreed to provide a summary of the BMP's in compliance with Conservation Measures 1.10 and 2.12 of the HCP/NCCP and these measures will be contained within the Planning Survey Report (PSR) Application. The BMP's will also be identified in the construction drainage, erosion, and sediment control plan (DESCP). [The applicant is working on revising the draft PSR based on my comments on the draft, I expect this information to be contained within the next submittal].

***2- Bald eagle were mentioned in the application - is this species covered under the HCP/NCCP?***

The bald eagle is not a HCP/NCCP covered species. During the creation of the HCP/NCCP the Bald eagle was evaluated for coverage because the inventory area is within range for this species, however there are very few records of known sightings of the species and it was determined that covered activities are not likely to directly impact this species. I was not aware that the Bald eagle was listed in either the CEC or PSR application, can you please let me know where you read this.

The applicant has provided information stating that the closest nesting sites for Bald eagle is within 10 miles of the OGS project.

***3-Is the applicant getting a variance for the encroachment on the 200 foot buffer for giant garter snake upland habitat at East Antioch Creek?***

The HCP/NCCP requires that impacts within giant garter snake habitat be avoided to the maximum extent possible, but provides coverage for impacts if necessary with avoidance/minimization measures in place. The applicant needs to, and has, delineated a 200 foot buffer of upland habitat as measures from the outer edge of an adjacent creek bank. Construction activities within a 200 foot buffer of aquatic habitat are limited to May 1-September 30. The applicant has delineated a buffer around east Antioch creek, see figure 3j, and the Conservancy has agreed that if the applicant ESA and Silt fence a perimeter around the creek that they will not be charged temporary impacts for that area. However, the area within the 200 foot buffer where construction will occur, for which there is a pole site, is limited to the work window of May 1-September 30. The Conservancy does not give variances, the applicant will just be conditioned to comply with the required work windows.

***4- Rick Crowe mentioned more surveys would be required this year - what is the focus of these surveys?***

Based on Section II of the PSR, an applicant is required to conduct spring and fall surveys for all covered and no-take plants. The applicant has completed spring plant surveys, as described in the draft PSR, and will be required to complete plant surveys this fall. For each landcover type present within any portion of the project area, the applicant is required to do all the rare plant surveys during the appropriate blooming season, be it fall or spring, or both.

***5- It appears that silvery legless lizard habitat occurs near the area where the soil stockpiles will be placed and Angela Picco (FWS) - see attached - had commented on the AFC that they could occur near the transmission line towers. Is take of this species covered under the OGS project application in any way e.g. thru the fees for permanent and temporary impacts, I reviewed the ECCC HCP/NCCP document and it appears that several preserve, vegetation, and recreation management measures are to be implemented to avoid or minimize impacts on silvery legless lizards and suitable habitat (particularly soils) in preserves however there is not any species-level measures are proposed for this species. How is this species handled if there is potential habitat on a project site?***

The silvery legless lizard (SLL) is currently listed as one of the 28 species covered under the HCP/NCCP. The HCP/NCCP addresses SLL like it does most other species without species level measures (Avoidance and Minimization Measures), but rather through preservation and enhancement of habitat off-site. Existing landscape-level and community level measures are sufficient to meet mitigation for habitat of SLL.

***6- Angela Picco also made other comments on species covered under the HCP/NCCP that I believe will be adequately addressed as part of the permit issued by the Conservancy - Items 1, 2, 4, 5, 6, 8, and 10. Do you concur?***

Based on information provided by the applicant to date, I concur that Items 1, 2, 4, 5, 6, 8, and 10 will be addressed through the applicant's participation in the HCP/NCCP.

***7- Does the USFWS and CDFG defer to the Conservancy for all formal consultation related to the species included in the application?***

I am not sure that I fully understand the intent of this question but I will provide several answers I think may satisfy this question.

The primary goal of the HCP/NCCP is to provide take authorization of covered species under ESA and NCCPA and USFWS and CDFG have provided assurances, unless otherwise required by law or regulation, to not impose measures in excess of those required by the HCP/NCCP.

In terms of the applicant obtaining the Certificate of Inclusion through the Conservancy, the Wildlife Agencies need to concur that the proposed project complies with all terms and requirements of the Plan, the permits, and the Implementing Agreement.

If you are talking about a federal nexus to FWS, then yes the Conservancy application will provide the required coverage for FWS covered through our program.

**8 - What is the construction-monitoring plan (page 23)? Could this be incorporated into the BRMIMP?**

The construction-monitoring plan (CMP) will include the following components: (Please see Section 6.3.3 of the HCP/NCCP)

- Results of planning and preconstruction surveys.
- Description of avoidance and minimization measures to be implemented, including a description of project-specific refinements to the measures or additional measures not included in the HCP/NCCP.
- Description of monitoring activities, including monitoring frequency and duration, and specific activities to be monitored.
- Description of the onsite authority of the construction monitor to modify implementation of the activity. Construction monitoring is necessary to ensure that avoidance and minimization measures are implemented in accordance with permit requirements.

The applicant has indicated that the construction monitoring reporting requirements will be incorporated in the final BRMIMP and has agreed to provide a draft version of the BRMIMP to the Conservancy for review prior to finalizing the BRMIMP document. The CMP will be submitted to the Conservancy within 30 days of the start of construction for review and approval.

**9-Verification of all mitigation measures and their implementation measures will be included in the BRMIMP and implementation of the measures will be included in Monthly Compliance Reports. I am going to include the Conservancy as also receiving the Monthly Monitoring Reports and will include you in review of the BRMIMP as we discussed during the phone call with the applicant. Conditions of Certification will be drafted that include payment of fees, preconstruction nest surveys and impact avoidance for MBTA birds of fully protected species, SJ kit fox, giant garter snake, CRLF, golden eagle, Swainson's hawk, and western burrowing owl and will be based upon measures included in the Conservancy Planning Survey Report. Does this seem to incorporate all that the applicant is required to implement for coverage under the HCP/NCCP?**

All the requirements within the PSR are the complete conditions of approval, some of which are contained within your paragraph above while some are not, but really the whole PSR is the conditions of project approval for the Conservancy and the applicant will be bound to comply with the complete PSR. I don't know if there is a simple way to pull everything from our application into your conditions to be honest. I can take a look at how you put this together and provide feedback if that is helpful... ?

**10 - As I am going to incorporate your permit conditions into the PSA would you like to review and informally comment on the PSA? As we are getting close to our proposed publication date (late October/early November) would a week be sufficient for you to informally review and provide comments in track changes? Please let me know what you would require. I could get you a draft later this week, likely by COB tomorrow.**

I would like to review and comment on the PSA. I will do my best to get it done within the available timeframe, but I usually can turn things around within two weeks. Also, please remember, and this is what worried me when you were given a copy of the PSR, is that you have been given a draft still in

development, therefore the information you have incorporated into the PSA is based on a draft application. I worry that the PSA information will not be complete in so far as the conservancy is concerned because we have not finalized the application. Thoughts?

Draft Responses to Angela Picco's (USFWS's) comments and questions from August, 2010

***1. Please consult the East Contra Costa County Habitat Conservancy to discuss covering the Antioch portion of the activities through the HCP as well.***

CEC is currently working in conjunction with the ECCCHC to establish the preliminary Conditions of Certification.

***2. AFC states that spoils will be stored onsite. Need to address burrowing owl issues, and potential for owls to colonize soils while they are temporarily stored onsite (2-33, 5.2-33).***

The applicant has chosen to participate in the East Contra Costa County Habitat Conservation Plan (HCP). Chapter 6 of the HCP outlines the requirements for construction monitoring, avoidance, and minimization measures for the burrowing owl. Therefore, the applicant will be required to address the potential impacts to burrowing owls as part of the PSR application.

***3. Need to analyze the potential effects of nitrogen deposition associated with this project (on top of baseline level of N-dep) on the Antioch Dunes National Wildlife Refuge (ADNWR) and the listed species present there. Also, AFS stated two different distances to ADNWR (2.25 miles west of site and 1.6 miles west of site), so need to correct this error (5.2-48).***

No comment.

***4. It appears that there will be a lot of construction in grasslands on the project site. Please include an analysis of the effects to species on grasslands (upland), and include any potential additional conservation measures that may minimize or avoid effects to listed species.***

The applicant has chosen to participate in the East Contra Costa County HCP. Chapter 6 of the HCP outlines the requirements for construction monitoring, avoidance, and minimization measures for the covered species. Therefore, the applicant will be required to address the potential impacts to the covered species as part of the PSR application.

***5. The AFC states that 17 transmission line towers will be changed as a result of the project, and that vegetation will be cleared 400 feet around each pole. Many of these towers appear to be in grassland. Please discuss the effects of this work on San Joaquin kit fox, burrowing owl, silvery legless lizard, white tailed kite, etc., and the proposed compensation for these effects.***

The applicant has chosen to participate in the East Contra Costa County HCP. Chapter 6 of the HCP outlines the requirements for construction monitoring, avoidance, and minimization measures for the covered species. Therefore, the applicant will be required to address the potential impacts to the covered species as part of the PSR application.

***6. If temporary effects are going to last for more than one year, they need to be analyzed as permanent effects, and compensated accordingly.***

The applicant has chosen to mitigate impacts by participating in the HCP/NCCP. Temporary impacts which last more than a year are treated as temporary in the HCP/NCCP and will therefore, be compensated accordingly.

**7. Need CDFG input on wetland issues (5.2-52).**

Contact Liam Davis with CDFG on this issue.

Liam Davis <LDAVIS@dfg.ca.gov>

**8. Where is the compensation and protection for San Joaquin kit fox that is mentioned on 5.2-57? Is this through the HCP/NCCP or separate from it?**

The San Joaquin kit fox will be covered under the HCP/NCCP.

**9. Need to include a discussion of penalties in WEAP training (5.2-54).**

No comment.

**10. Need to consult with CDFG on effects to burrowing owl. Will 1:1 compensate adequately for effects?**

The applicant has chosen to participate in the East Contra Costa County HCP. Chapter 6 of the HCP outlines the requirements for construction monitoring, avoidance, and minimization measures for the covered species. Therefore, the applicant will be required to address the potential impacts to the covered species as part of the PSR application.

**Ann Crisp - Re: Oakley GS - Questions regarding ECCC HCP/NCCP**

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**From:** Krystal Hinojosa <Krystal.Hinojosa@dcd.cccounty.us>  
**To:** ACrisp@energy.state.ca.us  
**Date:** 10/6/2010 5:04 PM  
**Subject:** Re: Oakley GS - Questions regarding ECCC HCP/NCCP  
**CC:** Ryork@energy.state.ca.us; PMartine@energy.state.ca.us  
**Attachments:** TN 58191 08-26-10 US Fish and Wildlife Comments on AFC.pdf - Adobe Acrobat Standard.pdf; Response to CEC questions\_10-6-10.docx

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Hello Ann,

Attached are my comments to your questions. Sorry for the delay in getting them to you. Let me know if you have any questions.

Best,

Krystal Hinojosa  
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 Contra Costa County, Department of Conservation and Development  
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 Martinez, CA 94553  
 Phone: 925-335-1271 Fax: 925-335-1299  
 Email: krystal.hinojosa@dcd.cccounty.us

**Ann Crisp <ACrisp@energy.state.ca.us>**

09/28/2010 10:55 AM

To "Krystal Hinojosa" <Krystal.Hinojosa@dcd.cccounty.us>  
 cc "Pierre Martinez" <PMartine@energy.state.ca.us>, "Rick York"  
 <Ryork@energy.state.ca.us>  
 Subject Oakley GS - Questions regarding ECCC HCP/NCCP

Hi Krystal,

Thanks so much for getting back to me yesterday - the Planning Report has been a great resource for me to incorporate into my Preliminary Staff Assessment (PSA); I have a few questions on the Planning Report and the Conservancy process:

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22 - will these be in the final application? As I am writing a PSA and a Final Staff Assessment (FSA) I can state in the PSA that additional BMPs are currently being developed with the applicant and the Conservancy and include these additional measures either in the FSA or the BRMIMP.

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Please let me know if you have any questions.

Thanks!

Ann Crisp



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Due to the Governor's Furlough Order, PML 2010-015, Energy Commission Offices will be closed the 2nd, 3rd & 4th Fridays of the month until further notice.